



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2008-0636; FRL-9927-24-Region 6]**

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico;  
Albuquerque/Bernalillo County; Revisions to Emissions Inventory Requirements, and  
General Provisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving under the Federal Clean Air Act (CAA) revisions to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP). These revisions add definitions and clarifying changes to the general provisions and add a new emissions inventory regulation that establishes reporting requirements for stationary sources in Albuquerque/Bernalillo County.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2008-0636. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Walser (6PD-L), Air Planning Section, telephone (214) 665-7128, e-mail: [walser.john@epa.gov](mailto:walser.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” means EPA.

## **I. Background**

The background for today’s action is discussed in detail in our February 2, 2015 direct final rule and proposal (80 FR 5471). The rule and proposal stated that if any relevant adverse comments were received by the end of the public comment period on March 4, 2015, the direct final rule would be withdrawn and we would respond to the comments in a subsequent final action. A relevant adverse comment was received during the comment period, and the direct final rule was withdrawn on March 26, 2015 (80 FR 15901). Our February 2, 2015 proposal provides the basis for today’s final action. The SIP revisions proposed for approval add definitions and

clarifying changes to the general provisions and add a new emissions inventory regulation that establishes reporting requirements for stationary sources in Albuquerque/Bernalillo County.

## **II. Response to Comments**

We received one comment letter dated February 20, 2015, from the Sierra Club, regarding our direct final rule.

Comment: “Acting regional administrator Sam Coleman cannot sign approvals, disapprovals, or any combination of approvals or disapproval, in whole or in part, due to the fact that agency actions on state implementation plans are required to be signed by the regional administrator, Ron Curry, not the current deputy regional administrator as stated in the agency’s delegations manual. The manual specifically states that SIP actions can’t be redelegated from the regional administrator.”

Response: As the Acting Regional Administrator, Deputy Regional Administrator Sam Coleman had authority to sign the proposal and direct final action on this State Implementation Plan. On January 15, 2015, the day that the proposal and direct final action were signed, Sam Coleman was acting in the capacity of the Regional Administrator for Ron Curry, who was absent from Region 6 at the time. The following language is listed in the Region 6 Deputy Regional Administrator’s position description “In the absence of the Regional Administrator, the Deputy Regional Administrator will perform the duties of the Regional Administrator.” A copy of the Deputy Regional Administrator’s position description is included in the docket for this rulemaking. Further, EPA Region 6 Order 1110.11 establishes a line of succession to perform the duties of the Regional Administrator should the Regional Administrator be absent from the

office. The Deputy Regional Administrator is the first person listed on that line of succession. A copy of EPA Region 6 Order 1110.11 is included in the docket for this rulemaking.

The heads of administrative agencies are statutorily vested with the authority to delegate authorities to subordinate officials, 5 U.S.C. § 302. Federal Courts have held that rules, including internal delegations and appointments of authority are effective regardless of publication in the Federal Register or the Code of Federal Regulations. The EPA Delegations Manual, more specifically Chapter 1-21, provides that the EPA Regional Administrators are delegated the authority, in relevant part, to sign and submit proposed State Implementation Plans, including revisions and compliance schedules. Chapter 1-21 of the EPA Delegations Manual specifically allows the redelegation of these authorities to the Deputies of the Regional Administrators. A copy of Chapter 1-21 of the EPA Delegations Manual is included in the docket for this rulemaking.

The comment only challenged the Deputy Regional Administrator's authority to sign the Direct Final Action. EPA received no other comments or challenges as to the substance of the proposal or direct final. Therefore, we are finalizing our action to approve this SIP amendment.

### **III. Final Action**

Pursuant to section 110 of the Act, EPA is approving five revisions to the New Mexico SIP that were submitted on May 6, 2008, November 6, 2009,<sup>1</sup> December 15, 2010 and October 18, 2012. We evaluated the state's submittals and determined that they meet the applicable requirements of the CAA section 110 and applicable EPA guidance. In accordance with CAA

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<sup>1</sup> There are two SIP submittals that were submitted on the same date, November 6, 2009 – one revising 20.11.1 NMAC and one revising 20.11.47 NMAC.

section 110(l), these revisions will not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

#### **IV. Incorporation by Reference**

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.4, we are finalizing the incorporation by reference of the revisions to the Albuquerque/Bernalillo County regulations as described in the Final Action of this rule. We have made, and will continue to make, these documents generally available electronically through [www.regulation.gov](http://www.regulation.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 27, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52–APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart GG – New Mexico**

2. In § 52.1620 (c), the second table titled “EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS” is amended by revising the entry for Part 1 (20.11.1 NMAC) and adding in sequential order an entry for Part 47 (20.11.47 NMAC) to read as follows:

**§ 52.1620 Identification of plan.**

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(c) \* \* \*

**EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS**

State Citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20 – Environmental Protection Chapter 11 – Albuquerque/Bernalillo County Air Quality Control Board				
Part 1 (20.11.1 NMAC)	General Provisions	12/15/2010	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u>	
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Part 47 (20.11.47 NMAC)	Emissions Inventory Requirements	10/18/2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u>	



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[FR Doc. 2015-10481 Filed: 5/6/2015 08:45 am; Publication Date: 5/7/2015]